Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

In the Matter of	)	
	)	
Amendment of Parts 21 and 74 of the	)	
Commission's Rules With Regard To	)	MM Docket No. 94-131
Filing Procedures In the Multi point	)	
Distribution Service And In the	)	
Instructional Television Fixed Service	)	
	)	
and	)	
	)	
Implementation of Section 309(j) of the	)	PP Docket No. 93-253
Communications Act - Competitive Bidding	)	

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REPLY COMMENTS
OF MULTI-MICRO, INC.

Multi-Micro, Inc. ("Multi-Micro") hereby replies to initial comments filed in response to the Notice of Proposed Rulemaking in the captioned proceeding, released December 1, 1994 ("*NPRM*"). Multi-Micro has for many years been the largest wireless cable consulting firm in the Nation, serving MMDS and ITFS applicants, licensees and operators in over 100 markets. In addition, Multi-Micro is itself a licensee of 24 MMDS and commercial ITFS facilities in markets of varied sizes. This experience has given Mutli-Micro a keen sense of the effects that the rule changes contemplated in the *NPRM* will have, particularly upon small to mid-sized wireless cable entities. Our reply focuses on initial comments relating to (1) the proposed electronic application form; (2) post-freeze filing procedures; and (3) expansion of the MMDS protected service area.

Electronic Application Form. In the *NPRM*, the Commission sought comment on "the feasibility of using a mandatory electronic filing system for new MDS station applications." *NPRM* at ¶ 20. In its comments, the Pepper & Corazzini law firm agrees, as does Multi-Micro, that implementation of an electronic filing procedure would facilitate the processing of applications, station data base control, and sorely needed access by the public to accurate information

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concerning the status of MMDS-related filings with the Commission. However, we wholeheartedly echo Pepper & Corazzini's concern that the Commission proceed cautiously. The detrimental effects of an immediate and mandatory conversion to an electronic filing system -- including processing delays caused by technical questions and confusion on the part of applicants -- could undermine the laudable goals of the proposal, at least in the near term. Frankly, wireless cable aspirants have struggled over the years with obstacles not always unrelated to the FCC's own procedures and processing policies, arising because certain regulatory changes spawned confusion on the parts of applicants as well as the FCC's processing staff. In some cases, this confusion unquestionably has prejudiced the substantive rights of applicants. Accordingly, we agree with Pepper & Corazzini that the "radical shift" (Comments of Pepper & Corazzini at 3) proposed in the *NPRM* warrants a more measured analysis than can be afforded in this proceeding.[1]

In the event the Commission rejects Pepper & Corazzini's recommendation that a Federal Advisory Committee (*see* Comments of Pepper & Corazzini at 4-7) be established to address the matter, the electronic filing procedure should be voluntary, at least for an initial transition period so that applicants, attorneys, engineers and the FCC's staff can convert to a paperless system. *See* Comments of Pepper & Corazzini at 8.

Post-freeze Filing Procedures. We concur conceptually with the recommendation of American Telecasting, Inc. ("ATI") and The Wireless Cable Association International, Inc.

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[1] Among several of our concerns is the way the Commission will handle interference analyses under an electronic filing system. In the *NPRM*, it is proposed that interference analyses not be required when applications are filed, implying that the FCC will conduct its own interference study based upon the technical parameters included in the application. *NPRM* at ¶ 15. We are concerned that this system may be abused by shoddy applicants whose technical studies are inadequate, a risk that will be more or less offset depending upon the completeness of the Commission's own analysis. A more workable approach may be to require hard-copy versions of the interference analysis within a certain period (*e.g.*, ten days) of the application's being filed.

("WCAI") that the Commission should begin accepting new MMDS application in a filing window open only to applicants who already have leases or licenses for a critical mass of channels. *See* Comments of ATI at 12; Comments of WCAI at 26. It is crucial that entities which have invested the resources to reach that threshold be given the opportunity to execute their business plans expeditiously -- a process widely thwarted at this time because of the application filing freeze. Entities in this category are best positioned to move quickly to establish new wireless cable systems, thus advancing the principal goal of this proceeding.

ATI cautions -- and we strongly agree -- that the determination of how many channels should constitute the threshold number be guided by rules to prevent fraud. Comments of ATI at 15. ATI recommends that this number be "9 or more MDS/ITFS channels." *Id.* at 14. We are concerned, however, that a formula which permits an applicant access to the first window by dint of ITFS channels only -- which is a possibility under ATI's proposal -- would be unwise. The practice of certain entities' accumulating and then hoarding access to ITFS channels with no genuine intention of constructing systems, is a well-known ruse that hurts the industry and the public -- yet ATI's proposal would allow the possibility of participation by such groups. To prevent that state of affairs, we would advocate that applicants in the first window demonstrate rights to at least eight channels, of which at least four must be MDS frequencies. We favor the other fraud-limiting safeguards recommended by ATI at Pages 15-16 of its Comments.

Likewise, we concur with ATI's well-developed criticisms of any "geographic boundary" or "area-based" approach for first-window licensing. Comments of ATI at 17-20. We recommend, therefore, that the FCC not alter its existing allocation rules during this initial post-freeze phase. In most cases, the entities that will qualify for access to the first window are those that have significant industry experience, a firm grasp of the direction they wish to move to complete system construction and build-outs, and a sound understanding of the FCC's existing rules. We

urge the Commission to permit applicants in this category to move ahead unfettered through the regulatory terrain with which they are already familiar. Once further channels are awarded to these applicants, other features of the *NPRM* may be implemented without undermining the progress of first-window applicants.[2]

Finally, in connection with first-window licensing we could not agree more strongly with ATI's recommendation that mutually exclusive first-window filers be given "a period of time after public notice of [the mutual exclusivity] to find a means of revising their respective proposals to terminate the mutual exclusivity or to agree to the acceptance of whatever mutual interference may exist." Comments of ATI at 22. The alternative of subjecting first-window filers to auctions would be counterproductive, for the benefits of negotiated solutions to MX cases -- including more expeditious service to the public -- will plainly outweigh the scant auction revenues expected to be derived from so small a class of conflicting applications.

Expansion of PSAs. Multi-Micro disagrees with ATI's and WCAI's advocacy of an expanded protected service area. *See* Comments of ATI at 23; Comments of WCAI at 16-25. Large operators will be the main beneficiaries of expanded PSAs: Because their systems are, by and large, located at final transmit sites already, expansion of their protected service areas will have the principal effect of reducing competition from newcomers at the fringes. We do not

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[2] Although MSA allocations are sometimes problematic, depending upon the characteristics of the particular MSA, the major detriment to a logical MMDS allocation scheme has been CMSAs. Where several PMSAs constitute an expansive CMSA, for which it is technically impossible for one MMDS licensee to serve the entire area, multiple PMSA licensees should be permitted so long as they satisfy the Commission's interference standards for protection of existing stations. Similarly, in very large MSAs an existing licensee should be permitted to request authority to apply for additional transmit sites within the MSA provided the current rules for protection of other stations are satisfied. Only in this way can residents of distant sectors of a large MSA have the opportunity to receive service. The alternative of eliminating the MSA scheme in favor of an interference-based system is not acceptable because it would open the door to abuse from mills.

disagree that expansion of the PSA would offer certain benefits, but the anti-competitive potential of that rule change should be the overriding concern. Interestingly, among the benefits of expanding the PSA asserted by WCAI, an increase in competition -- the cardinal virtue of wireless cable service -- is not mentioned. *Ibid.* We are not aware of any serious problems caused by the 15 mile PSA definition, and expanding PSA bounds may, in the given case, be contrary to the public interest by restricting opportunities for co-location of stations or relocation of stations to a more desirable transmit site.

Respectfully submitted,

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